CycleI IN THE MATTER OF BEFORE THE RECLASSIFICATION REQUEST \* COUNTY BOARD OF APPEALS ML-IM TO BR ENGINEERS AND IRON WORKERS/PETITIONERS BALTIMORE COUNTY

## BRIEF IN SUPPORT OF RECLASSIFICATION REQUEST

\* Case No.

Now Comes Engineers and Iron Workers, Owners and Petitioners of the above-captioned property, by DiNenna, Mann & Breschi, S. Eric DiNenna, Esquire, their attorneys, in support of their Request for Reclassification from an hu-IM District, to a BR zone, respectfully states:

- 1. That the subject property contains ten (10) acres of land, more or less, is presently classified ML-IM and is undeveloped;
- 2. That the present zoning of the subject property is erroneous in that in the adoption of the comprehensive Zoning Map of October, 1988, the County Council did not consider the availability of BR zoning classifications along the Reisterstown Road corridor and the location of the subject property to other commercial activities in the area;
- 3. That numerous attempts to develop the property have been made by the present property owner as well as their predecessors, but to no avail;
- 4. That the present classification does not provide to the owners of the property, a reasonable use of the property:

- 1 -

5. For such other and further reasons to be presented at

CERTIFICATE OF POSTING TONING DEPARTMENT OF BALTIMORE COUNTY

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property		<u> </u>
property  lemarks:  Posted by L.J. Arata  Signature		Road in front of subject  a or return September 29, 1959

CERTIFICATE OF PUBLICATION

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed Sept. 21 , 12 89

THE JEFFERSONIAN,

PO 17171 price \$ 74.86 time of hearing.

Due so recent expansion, local Telephone Co. has immediate opening

manent positions only! If you are s

true winner and are ready to consist

so an exceptional career, we want to

talk to you. Contact Jack # 833-BELL

ARKLINES NOW BURING - Flight As-tendants, Travel Agents, Merchanics, Costoner Service. Listings. Salaries to

\$105K. Entry level positions. Call (1)

EMPLOYMENT OPPORTUNITY

Old Court Crown, F/T P/T positions

available. Apoly in person Liberty & :

LARGE FURNISHED ROOM

Criticies included, private cable TV, A/C. landry, kitchen privileges, \$70

reckly. 655-7582.

teasonable, 655-4711 or 655-2820.

HILFORD MILL/SUDBROOK - Fur-

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privileges. References. \$245/month in-

FOR RENT

805-687-6000, ext. A-7952.

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44.50 feet, (6) North 20 degrees 33 minutes 10
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Pattion to reclasely the property train an M.L.

TRAC: 10:00 à 6
DATE: Wednesday, October 11, 1986
LOCATION: Room 301, County Office Build
111 W. Chesapseite Avenue,
Towson, Maryland 21204

Dinenna, mann à Breschi P.O. Box 10508 Towson, Maryland 21285-0508

(301) 296-6820 Attorney For Petitioners

eferrals generated by public

If a consumer is faced with

problem, is uncertain

thether it is a legal matter re-

uning an attorney and

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elp may be found by calling

192-1993. This is an excellent

ublic educational program,

when they don't. It also saves

the cost of an initial visit to an

As an added public service

Lawyer Referral Service at-

Often the initial visit may

e consumer to handle the

referred attorney. The Maryland State Bar As

NE/S Reisterstown Rd., 1150 OF BALTIMORE COUNTY NW of C/L Rosewood La.; Also Corner NW/S Proposed Owings Mills Blvd., 4th Election Dist.; 3rd Councilmanic Dist. ENGINEERS & IRON WORKERS, Case No. R-89-455 Petitioner ENTRY OF APPEARANCE Please enter the appearance of the People's Counsel in the abovecaptioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order. Deputy People's Counsel Room 304, County Office Building

I HEREBY CERTIFY that on this 13th day of July, 1989, a copy of the foregoing Entry of Appearance was mailed to S. Eric DiNenna, Esquire, P. O. Box 10508, Towson, MD 21285-0508, Attorney for Petitioner.

(301) 887-2188

111 W. Chesapeake Avenue

Towson, Maryland 21204

COUNTY BOARD OF APPEALS

46:34 AS:34

Cycle I

Harris, Smariga, Matz, Inc.

## DESCRIPTION

10 AC+ PARCEL - LANDAY PROPERTY NORTHWEST CORNER REISTERSTOWN ROAD AND OWINGS MILLS BOULEVARD, BALTIMORE COUNTY, MARYLAND 

BEGINNING at the northwest corner of Reisterstown Road and Owings Mills Boulevard, as proposed, said beginning point being distant 1150 feet more or less, as measured northwesterly along the northeast side of said Reisterstown Road, from Rosewood Lane running thence binding on the northeast side of Reisterstown Road (1) Northwesterly by a curve to the right the arc distance of 296.65 feet, thence binding on the westerly outlines of the Landay Property nineteen courses (2) North 06 degrees 21 minutes 25 seconds East 184.05 feet, (3) North 06 degrees 22 minutes 01 seconds East 100.00 feet, (4) North 11 degrees 53 minutes 32 seconds East 79.40 feet, (5) North 16 degrees 31 minutes 39 seconds East 64.50 feet, (6) North 20 degrees 33 minutes 10 seconds East 58.56 feet, (7) North 24 degrees 10 minutes 07 seconds East 100.00 feet, (8) North 23 degrees 59 minutes 07 seconds East 71.00 feet, (9) South 66 degrees 36 minutes 54 seconds East 50.00 feet, (10) North 23 degrees 52 minutes 11 seconds East 74.56 feet, (11) North 17 degrees 46 minutes 57 seconds East 106.08 feet, (12) North 10 degrees 38 minutes 33 seconds East 106.89 feet, (13) North 01 degrees 13 minutes 18 seconds East 106.36 feet, (14) North 08 degrees 27 minutes 47

Harris, Smariga & Associates, Inc.

Harris, Smariga, Orsillo, Inc.

PETITION FOR ZONING RE-CLASSIFICATION SPECIAL EXCEPTION AND/OR VARIANCE

TO THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be re-classified, pursuant to the Zoning Law of Baltimore County, from an ML-IM zone to an BR zone, for the reasons given in the attached statement; and (2) for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property,

and (3) for the reasons given in the attached statement, a variance from the following sections of the Zoning Law and Zoning Regulations of Baltimore County:

Property is to be posted and advertised as prescribed by The Baltimore County Code. I, or we, agree to pay expenses of above Re-classification, Special Exception and/or Variance, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore

County.	and the particular to the boling have for battingie
Contract Purchaser:	Legal Owner(s):
	Engineers & Iron Workers
(Type or Print Name)	(Type or Print Name)  B  X  Angel Soule by (Asse)
Signature	Signature
Address	(Type or Print Name)
City and State Attorney for Petitioner:	Signature
S. Erig Ornenpa Esquire	5907 Harford Road
(Type of Print Stame)	Address Phone No.
Signature Signature	Baltimore, MD 21214 City and State
P.O. Box 10508 Address	Name, address and phone number of legal owner, con- tract purchaser or representative to be contacted
Towson, Maryland 21285-0508 City and State	S. Eric DiNenna, Esquire
Attorney's Telephone No.: _(301)296-6820	P.O. Box 10508 Towson, MD 21285-0508 (301) 296

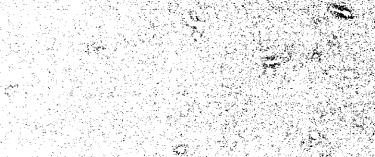
Description 10 Acres + Page 2

seconds West 106.31 feet, (15) North 12 degrees 23 minutes 15 seconds West 103.33 feet, (16) South 77 degrees 36 minutes 45 seconds West 50.00 feet, (17) North 18 degrees 54 minutes 30 seconds West 100.36 feet, (18) North 57 degrees 03 minutes 55 seconds East 79.17 feet, (19) South 34 degrees 15 minutes 58 seconds East 86.34 feet and (20) North 55 degrees 44 minutes C2 seconds East 50.00 feet to the west side of said Owings Mills Boulevard, thence binding thereon (21) Southerly by a curve to the right the arc distance of 1606.19 feet to the place of beginning. CONTAINING 10 acres of land more or less.

HSM Job No.: 40069



February 28, 1989



West 50.00 feet, (17) North 18 degrees S4 mirades 30 seconds West 100.36 feet, (18) North 57 degrees C3 m2.stes 55 seconds East 79.17 feet, (19) South 34 degrees 15 mirates 58 seconds East 66.34 feet and (20) North 55 degrees 44 mirates 56 seconds East 50.00 feet to the west side at sed Owings Mills Boulevard, frence binding thoron (21) Southarly by a curve to the right the arc distance of 1606.19 feet to the place of beginning.

CONTAMENG 10 a.res of that make the proposition to reclassify the prop-Position to reclassify the property from an M.L.-LM. to an E.f.

Number of Signer

Petition for Zoning Reclassification Case Number: R-89-455 NE'S Reisterstorm Road, \$150' NW of Rosewood La

Beginning at the northwest cor-ner of Reisterstown Roed and Owings Mitte Boulevard, as proposed, said beginning port-being distant 1150 feet more or less, as measured northwesterly along the northerest eide of said Reisterstown Roed, from Rose-ment of the northerest before hord-

wood Larus, running therice binting on the northeast side of Reissesstown Road. (1) Northwesterly by a curve to the right the arc distance of 296.65 feet, therical binding on the westerly

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degrees 58 minutes 54 seconds East 50.00 feet, (10) North 23 degrees 52 minutes 11 seconds East 74.56 feet, (11) Nor 17

degrees 27 minutes 47 seconds West 106.31 feet, (15) North 12 degrees 23 minutes 15 seconds West 103.33 feet, (16) South 77 degrees 36 minutes 45 seconds West 50.00 feet, (17) North 18

TIME: 10:02 A.M.
DATE: WED, OCT. 11, 131
LOCATION: Rin. 301,
Coarry Office Building.
111 W. Chisappake Ave.
Towson, Maryland 21204.
WILLIAM T. HACK!

## NOTICE OF HEARING PETITION FOR ZONING RECLASSIFICATION

Petition for Loning Reclassification Case Number: 2-89-455 NE/S Reinterstone Road, 1159° Mi c/l Accessed Lane Also Cor Mi/S proposed Owings Mills Boulevard Patitioner(s): Engineers & Iron Workers

BEGINKING at the northwest corner of Relaterators Esed and Owings Hills Boulevard, as proposed, said beginning point being feat. (11) North 17 degrees 46 minutes seconds East 106.08 feet, (12) North 10 degrees 36 minutes 33 seconds East 105.89 feet, {13} North 01 degrees 13 minutes 18 seconds Best 106.36 feet, (14) North 00 degrees 27 minutes 47

seconds West 105.31 feet, (15) North 12 degrees 23 minutes 15 seconds West 103.33 feet, (16) South 77 degrees 36 minutes 4 seconds West 50.00 feet. (17) North 18 degrees 56 minutes 36 feet, (18) North 57 degrees 03 minutes 55 seconds Bast 79.17 feet, (19) South 34 degrees 15 minutes 58 seconds East 86.34 feet and (20) North 55 degrees 46 minutes 6 seconds East 50.00 feet to the west side of said Owings #11s Boulevard, thance binding thereon (21) Southerly by a curve to the right the arc distance of 1606.19 feet to the place of beginning. CONTAINING 10 acres of land more or less.

Petition to reclassify the property from an M.L.-I.M. to am B.R. zone.

Room 301, County Office Building, 111 W. Chesepeaks

Avenue, Towson, Maryland 21204

WILLIAM T. HACKETT, CHAIRMAN County Board of Appeals

I 30M-0 236-000 JR YAY YAGRALA RECLASSIFICATION AND REDISTRICTING PETITIONS ACCEPTED

Reduced Thotocopy of Add Ran

FOR FILING BY BALTIMORE COUNTY BOARD OF APPEALS FOR THE APRIL 1989 -OCTOBER.1989 ZONING RECLASSIFICATION CYCLE I LOCATIONS OF PROPERTIES UNDER PETITION

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Circles Fuebaut - for sales: Elife York Rend, opposite Rose Street, approx. 2027 E et contaction York Famil (2025 York Rosel - Rosel) Electron Street, & R. L.S. Electron Street, & M.

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Content Producer: Case by Record

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Area: 8 Bi

Proposed Zeating: B.R.-8.8

16. Property Corner: Jack Farley
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Partis, Avenue (1977 West Chesapeabe Avenue)
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Esting Zening: D.R.-S.S.
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LISTINGS OF PETITIONS: Numbers in the listings are keyed to the map above

BY ORDER OF
WILLIAM HACKETT,
CHAIRMAN, COUNTY BOARD OF APPEALS
FOR BALTIMORE COUNTY AND
P. DAVID FIELDS
DIRECTOR OF PLANNING AND ZONING

Baltimore County Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204 (301) 887-3353 J. Robert Haines

Engineers & Iron Norkers 5907 Harford Road Baltimore, Maryland 21214

Re: Petition for Loning Re-classification CASE NUMBER: CR89-455 NE/S Reisterstown Road, 1150' NW c/l Rosewood Lane also Cor Mi/S proposed Owings Mills Boulevard 4th Election District - 3rd Councilmanic

Hearing Scheduled: October 11, 1989

Dear Petitioner(s):

Please make your check psyable to "Baltimore County, Maryland" and remit it to Ms. 6. Stephens,

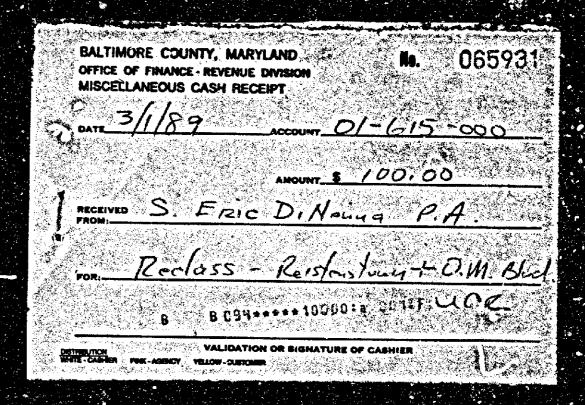
Zoning Office, Room 113, County Office Building, 111 W. Chesapeake Lvenue, Towson, Maryland 21204,

THIS PEE MUST BE PAID AND THE RECLASSIFICATION SIGN AND POST RETURNED TO THE BALTIMORE COUNTY ZONDIE OFFICE ON THE DAY OF THE BOARD OF APPRALS! HEARING ON THE ORDER WILL NOT BE ISSUED.

J. Robert Haines

cc: S. Kric DiNenna, Esq

BALTIMORE COUNTY, MARYLAND 8 2777339 O'FICE OF FINANCE - REVENUE DIVISION MISCELLANEOUS CASH RECEIPT U 084 .... 47277 VALIDATION OR SIGNATURE OF CASHIER



NOTICE OF HEARING

Petition for Zoning Reclassification Case Number: R-89-455 NE/S Reisterstown Road, 1150' NW c/l Rosewood Lane Also Cor NW/S proposed Owings Mills Boulevard Petitioner(s): Engineers & Iron Workers

Petition to reclassify the property from an M.L.-I.M. to an B.R. zone.

WEDNESDAY, OCTOBER 11, 1989

Room 301, County Office Building, 111 W. Chesepeake

WILLIAM T. FACKETT, CHAIRMAN County Board of Appeals

cc: S. Eric Dillenna, Esq. People's Counsel Board of Appeals

THIS IS TO ADVISE YOU THAT YOU WILL BE BILLED BY THE ZONING OFFICE FOR ADVERTISING AND POSTING COSTS WITH RESPECT TO THIS CASE APPROXIMATELY & WEEK BEFORE THE HEARING. THIS FEE MUST BE PAID AND THE SIGN AND POST RETURNALD TO THE ZONING OFFICE ON THE DAY OF THE HEARING OR THE CRIDER WILL NOT BE

V.T.H.

NOTICE OF HEARING

Pacition for Zoning Reclassification Case Humber: R-89-455 NE/S Reisterstown Road, 11 ) NN c/1 Rosewood Lane Also Cor HW/S proposed Owings Mills Boulevard Petitioner(s): Engineers & con Workers

Petition to reclassify the property from an H.L.-I.H. to an B.R. zone.

WILLIAM T. HACKETT, CHAIRMAN County Board of Appeals

cc: S. Eric Dillenna, Esq. People's Counsel Board of Appeals

THIS IS TO ADVISE YOU THAT YOU WILL BE BILLED BY THE ZONING OFFICE FOR ADVERTISING AND POSTING COSTS WITH RESPECT TO THIS CASE APPROXIMATELY A WEEK BEFORE THE HEARING. THIS FEE MUST BE PAID AND THE SIGN AND POST RETURNED TO THE ZONING OFFICE ON THE DAY OF THE HEARING OR THE ORDER WILL NOT BE

> 10/11/89 -Continued on the record; no reset date; to be requested by Counsel. (kcw note: #85)

> > 89 APR 25 PN 2: 00

County Board of Appeals of Baltimore County

COUNTY OFFICE BUILDING, ROOM 315 111 W. CHESAPEAKE AVENUE TOWSON, MARYLAND 21204 (301) 887-3180

Hearing Room -Room 301, County Office Bldg. September 17, 1991

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. R-89-455 Item #5, Cycle I

(For the purpose of

ENGINEERS & IRON WORKERS NE/s Reisterstown Road, 1150' NW of c/l Rosewood La., cor/NW/s proposed Owings Mills Boulevard 4th Election District 3rd Councilmanic District

submitting an Amended Petition)

ASSIGNED FOR:

Reclassification from ML-IM to B.R. WEDNESDAY, OCTOBER 2, 1991 AT 9:30 A.M.

cc: S. Eric DiNenna, Esquire Engineers & Iron Workers Counsel for Petitioner Petitioner

David J. Preller, Esquire Geraldine Klauber, Esquire

Zoning Administration

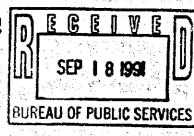
James Earl Kraft People's Counsel for Baltimore County

P. David Fields Pat Keller Public Services out pur Paula 9/25/ Lawrence E. Schmidt Timothy H. Kotroco James E. Dyer W. Carl Richards, Jr. Docket Clerk - Zoning Arnold Jablon, Director

LindaLee M. Kuszmaul Legal Secretary



County Board of Appeals of Baltimore County 6 E G E I V E 6 COUNTY OFFICE BUILDING, ROOM 315 111 W. CHESAPEAKE AVENUE TOWSON, MARYLAND 21204



Room 301, County Office Bldg. September 17, 1991 NOTICE OF ASSIGNMENT

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(301) 887-3180

CASE NO. R-89-455 Item #5, Cycle I 1989 (For the purpose of submitting an Amended

NE/s Reisterstown Road, 1150' NW of c/l Rosewood La., cor/NW/s proposed Owings Mills Boulevard 4th Election District

ENGINEERS & IRON WORKERS

Petition) ASSIGNED FOR: 3rd Councilmanic District Reclassification from ML-IM to B.R. WEDNESDAY, OCTOBER 2, 1991 AT 9:30 A.M.

cc: S. Eric DiNenna, Esquire Engineers & Iron Workers

David J. Preller, Esquire Geraldine Klauber, Esquire James Earl Kraft People's Counsel for Baltimore County

P. David Fields Pat Keller √Public Services Lawrence E. Schmidt Timothy H. Kotroco James E. Dyer W. Carl Richards, Jr. Docket Clerk - Zoning

Arnold Jablon, Director Zoning Administration

LindaLee M. Kuszmaul Legal Secretary SZ d3S 16

Counsel for Petitioner

Petitioner |



County Board of Appeals of Baltimore County

COUNTY OFFICE BUILDING, ROOM \$15 111 W. CHESAPEAKE AVENUE TOWSON, MARYLAND 21204 (301) 887-3180

Room 301, County Office Bldg. September 25, 1991

## NOTICE OF POSTPONEMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. R-89-455 Item #5, Cycle I 1989

ENGINEERS & IRON WORKERS NE/s Reisterstown Road, 1150' NW of c/l Rosewood La., cor T'/s proposed Owings Mills Boulevard

(For the purpose of submitting an Amended Petition)

3rd Councilmanic District Reclassification from ML-IM to B.R.

which had been scheduled for hearing on Wednesday, October 2, 1991 for the purpose of accepting an Amended Petition has been POSTPONED at the request of Counsel for Pe .tioner due to scheduling conflict and will not be reset until suc' time as requested by Petitioner.

4th Election District

cc: S. Eric DiNenna, Esquire

Counsel for Petitioner

Petitioner

Engineers & Iron Workers

David J. Preller, Esquire Geraldine Klauber, Esquire James Earl Kraft People's Counsel for Baltimore County P. David Fields Pat Keller

Public Bervices out per Paula 9/30/9 Lawrence E. Schmidt / Timothy H. Kotroco James E. Dyer W. Carl Richards, Jr. Docket Clerk - Zoning

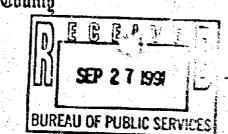
Arnold Jablon, Director

Zoning Administration

Kathleen C. Weidenhammer Administrative Assistant

County Board of Appeals of Baltimore County

COUNTY OFFICE BUILDING, ROOM 315 111 W. CHESAPEAKE AVENUE TOWSON, MARYLAND 21204 (301) 887-3180



Room 301, County Office Bldg. September 25, 1991

NOTICE OF POSTPONEMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. R-89-455 Item #5, Cycle I 1989

ENGINEERS & IRON WORKERS NE/s Reisterstown Road, 1150' NW of c/l Rosewood La., cor/NW/s proposed Owings Mills Boulevard 4th Election District

(For the purpose of submitting an Amended Petition)

3rd Councilmanic District Reclassification from ML-IM to B.R.

which had been scheduled for hearing on Wednesday, October 2, 1991 for the purpose of accepting an Amended Petition has been POSTPONED at the request of Counsel for Petitioner due to scheduling conflict and will not be reset until such time as requested by Petitioner.

cc: S. Eric DiNenna, Esquire

Counsel for Petitioner

Petitioner

Engineers & Iron Workers

David J. Preller, Esquire Geraldine Klauber, Esquire

James Earl Kraft People's Counsel for Baltimore County P. David Fields Pat Keller Public Services Lawrence E. Schmidt Timothy H. Kotroco James E. Dyer W. Carl Richards, Jr. Docket Clerk - Zoning Arnold Jablon, Director Zoning Administration

> Kathleen C. Weidenhammer Administrative Assistant

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

October 2, 1989

Burray of

Department of Traffic Engineering

Bureau of Fire Prevention

Health Department

Project Planning

Building Department

State Roads Commission

S. Eric DiNenna, Esquire P.O. Box 10508 Towson, MD 21285-0508

> RE: Item No. 5 Case No. R89-455 Petitioner: Engineers & Iron Workers Reclassification Petition

Dear Mr. DiNenna:

This reclassification petition has been timely filed with the Board of Education Board of Appeals for a public hearing within the October-April Zoning Administration reclassification cycle (Cycle V). It has been reviewed by the Industrial zoning office as to form and content and has also been reviewed by the Zoning Plans Advisory Committee. The review and enclosed comments from the Committee are intended to provide you and the Board of Appeals with an insight as to possible conflicts or problems that could arise from the requested reclassification or uses and improvements that may

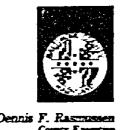
> If it has been suggested that the petition forms, descriptions, briefs, and/or the site plans be amended so as to reflect better compliance with the zoning regulations and/or commenting agencies' standards and policies, you are requested to review these comments, make your own judgment as to their accuracy and submit the necessary amendments to this office on or before October 26, 1989. In the event that any requested amendments are not received prior to this date, the petition will be advertised as originally submitted.

be specified as part of the request. They are not intended to

indicate the appropriateness of the zoning action requested.

In view of the fact that the submitted site plan does not indicate a proposed use at this time, the comments from this Committee are general in nature. If the request is granted and an additional hearing is required at a later date, more detailed comments will be submitted at that time.

Baltimore County Zoning Commissioner Office of Planning & Zoning Towson, Maryland 21204 (301) 887-3353 J. Robert Haines Zoning Commissioner



Your petition has been received and accepted for filing this

1st day of March, 1989.

ZONING COMMISSIONER

Received By:

Zoning Plans Advisory Committee

Petitioner: Engineers & Iron Workers, et al Petitioner's Attorney: S. Eric DiNenna



Maryland Department of Tiansportation State Highway Administration

Richard H. Trainor Hal Kassoff

April 24, 1989

Mr. J. Robert Haines Zoning Commissioner County Office Building Towson, Maryland 21204

Attn: Mr. James Dyer

Re: Baltimore County Zoning Reclassification Petition Engineers & Iron Workers \*R89-455; October 11, 1989 N/S Reisterstown Road (MD 140) N/W/S of Proposed Owings Mills Boul vard

(Item #5-Cycle I)

Dear Mr. Haines:

After reviewing the submittals of the Engineer & Iron Workers property, we find the plan must be revised to show a future 80' right of way on Reisterstown Road.

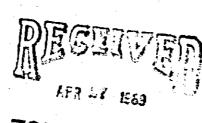
If you have any questions, please contact Larry Brocato at

Very truly yours,

Engineering Access Fermits

LB:maw

cc: Harris, Smariga, Matz, Inc. Mr. E. DiNenna, Esq. Mr. J. Ogle



ZONING OFFICE

My telephone number is (301)\_\_\_\_\_\_333-1350\_\_\_\_ Teletypewriter for impaired Hearing or Speech 383-7555 Baltimore Metro - 565-0451 D.C. Metro - 1-800-492-5062 Statewide Toli Free 707 North Calvert St., Baltimore, Maryland 21203-0717 Baltimore County Fire Department Towson, Maryland 21204-2586 494-4509

Paul H. Reincke

William Hackett Chairman, Board of Appeals Office of Planning and Zoning Baltimore County Office Building Towson, MD 21204

Re: Property Owner: Engineers & Iron Workers

Location: NE/S Reisterstown Rd., 1150' NW of centerline Rosewood La. also cor/NW/S proposed Owings Mills Blvd. Item No.: Five (5) Zoning Agenda: 4/89-10/89

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

- ( ) 1. Fire hydrants for the referenced property are required and shall be located at intervals or \_\_\_\_ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.
- ( ) 2. A second means of vehicle access is required for the site.
- ( ) 3. The vehicle dead end condition shown at
- EXCEEDS the maximum allowed by the Fire Department. ( ) 4. The site shall be made to comply with all applicable parts of the
- Fire Prevention Cude prior to occupancy or beginning of operation ( ) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code," edition prior to occupancy.
- ( ) 6. Site plans are approved, as drawn.
- ( X) 7. The Fire Prevention Bureau has no comments at this time.

Special Inspection Division

If you have any questions concerning the enclosed comments, please feel free to contact the Zoning Office at 887-3391 or the commenting agency.

Very truly yours,

JAMES E. DYER Chairman Zoning Plans Advisory Committee

Enclosures

cc: Engineers & Iron Workers 5907 Harford Road Baltimore, MD 21214

Department of Public Works Bureau of Traffic Engineering Courts Building, Suite 405 Towson, Maryland 21204 (301) 887-3554

Mr. William Hackett

County Office Building

Towson, Maryland 21204

May 9, 1989

Zoning Reclassification Cycle 1

Item No. 5

Chairman, Board of Appeals

Property Owner: Case No./Hearing Date: Location:

Existing Zoning: Election District: Councilmanic District: Acres: Proposed Zoning:

Dear Mr. Hackett:

The existing M.L. - I.M. zoning for this site can be expected to generate approximately 515 trips per day. The proposed B.R. zoning can be expected to generate approximately 5,000 trips per day.

Access to this site may be a problem, due to the grade of Reisterstown Road in this area, and the sight distance problems caused by the R.R. bridge to the north of the site.

Very truly yours,

M.L. - I.M.

April - October, 1989

Engineers & Iron Workers

R89-455; October 11, 1989

N.E./S. Reisterstown Road

1150' N.W. of Centerline Rosewood

Michael S. Flanigan



County Board of Appeals of Baltimore County

COUNTY OFFICE BUILDING, ROOM 315 111 W. CHESAPEAKE AVENUE TOWSON, MARYLAND 21204 (301) 857-3180

August 17, 1989

S. Eric DiNenna, Esquire DINENNA, MANN & BRESCHI P.O. Box 10508 Towson, MD 21285-0508

> RE: Case No. R-89 Engineers & Irun Workers, Petitioners

Dear Mr. DiNenna:

Your request for postponement of the subject case which is set for hearing on October 11, 1989 is herewith denied. This case involves a Petition for Reclassification, which was been advertised, and actices have been sent to all parties.

Very truly yours,

William T. Hacket William T. Hackett, Chairman County Board of Appeals

WTH:kcw

cc: Phyllis Cole Friedman, Esquire

i01 Bosley Avenue

Towson, MD 21204

Fax 887-5862

September 11, 1991

S. Eric DiNeena Mercantile - Towson Building 409 Washington Avenue, Suite 600 Towson, Maryland 21204

> RE: Claridge Towers/Engineers & Iron Workers

Dear Mr. DiNenna,

Please be advised that the two properties referenced in your letters of August 19, 1991 have become part of the 1992 Comprehensive Zoning Map Process since neither case was adjudicated prior to August 1, 1991. The issue numbers for the two Petitions (R-89-455) and CR-90-409-SPHA) are 3.002 and 3.005, respectively.

Baltimore County Government Office of Planning and Zoning

In response to your letter of September 4, 1991 (see attached) regarding the F lineers & Iron Workers property located in Owings regarding the F lineers & Iron Workers property located in Owings Mills, this office feels that it is imperative that a Petition be amended when there is a change in ownership of a site subject to a reclassification request. Notification appears particularly the filing of such a request to the legal owner of a property or his or her legally authorized representative.

Thank you in advance for your assurance that information will be forwarded to this office regarding the actual ownership of the

If there should be any questions or if I can provide additional information, please contact me.

Sincerely,

cc: William T. Hackett, Chairman Board of Appeals Arnold Jablon, Director V Zoning Administration and Development Management

ZONING OFFICE

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49 **400 WASHINGTON AVENUE** TOWSON, MARYLAND 21204 (410) 887-3180

October 13, 1993

Engineers & Iron Workers -Petitioners

George A. Breschi, Esquire DINENNA AND BRESCHI Suite 600 Mercantile-Towson Building 409 Washington Avenue To son, MD 21204

RE: Case No. R-89-455

Dear Mr. Breschi:

The Board has completed an audit of pending cases before it and has located the above-referenced Petition for Reclassification, on which Eric DiNenna appeared as Counsel for Petitioner. This Petition was filed with the Board prior to the County Council's enactment of the 1992 Comprehensive Zoning Maps. In view of this subsequent enactment by the Council, this Petition for Reclassification of the subject property is moot. The Board will therefore withdraw this Petition from its docket of pending cases and close our file.

Please contact me within fifteen (15) days from the date of this let if you have any questions or comments concerning the above action.

Very truly yours,

William T Wachel William T. Hackett, Chairman County Board of Appeals

cc: Joseph G. Peeler, Jr., Vice President Engineers & Iron Workers David J. Preller, Esquire Geraldine Klauber, Esquire Mr. James Earl Kraft People's Counsel for Baltimore County P. David Fields Lawrence E. Schmidt Timothy M. Kotroco James Thompson /ZADM W. Carl Richards, Jr. /ZADM Docket Clerk /ZADM Arnold Jablon, Director /ZADM

Engineers & Iron Work NE/s Reisterstown Road 1150' NW of c/l Rosewood Lane, Cor/NW/s Proposed Owings Mills Boulevard M.L.-I.M. to B.R.

#R-89-455 Item #5 Cycle I - 1989 4th E; 3rd C 10 acres

8/16/89 -Letter requesting postponement from S. Eric DiNenna, Counsel for Petitioner due to prior commitments.

8/17/89 -Letter to Mr. DiNenna DENYING postponement request; reclass has been advertised and notices sent; case must be heard within timeframe mandated by law.

10/03/89 -Letter from S. Eric Dinenna, Esq -- advising of intent to request continuance on the record (sitting as Master in Circuit Court); has copied PC and asked that any Protestants of which the Board or PC are aware be advised as well (he has not been contacted by any potential protestants).

10/11/89 -Continued on the record; no reset date; to be requested by Counsel.

9/17/91 - Following parties notified of hearing set for October 2, 1991 at 9:30 a.m. for the purpose of submitting an Amended Plan only: S. Eric DiNenna, Esquire Geraldine Klauber, Esquire David J. Preller, Esquire Engineers & Iron Workers Mr. James Earl Kraft People's Counsel Lawrence E. Schmidt P. David Fields, Pat Keller, F. Robert Haines, Timothy E. Kotroco, James E. Dyer, W. Carl Richards, Jr., Docket Clerk - Zoning, Arnold Jablon Public Services

9/25/91 -Letter dtd 9/24/91 from S. Eric DiNenna requesting postponement of matter set for 10/02/91 due to schedule conflict (sitting as Master that day); asking that matter be reset for purpose of submitting amended plan upon request of Petitioner.

9/25/91 -Notice of POSTPONEMENT sent to above; not to be reset until requested by Petitioner.

10/13/93 -Ltr to George Breschi, Esq. as Counsel for Petitioner --E. DiNenna appeared as Counsel for Petitioner; advising Mr. Breschi that petition is now MOOT as result of enactment of 1992 Comp. Zoning Maps by County Council; Board will withdraw petition from docket and close file; allowing 15 days for comment/questions.

DINENNA, MANN & BRESCHI ATTORNEYS AT LAW

S ERIC DINENNA P.A. JAMES L. MANN, JR., P.A. GEO®CE A. BRESCHI, P.A. GERALDINE A. KLAUBER FRANCIS X. BORGERDING, JR.

P.O. BOX 10506 TOWSON, MARYLAND 21295-0508 SUITE 600 MERCANTILE-TOWSON BUILDING 409 WASHINGTON AVENCE

August 15, 1989

(301) 296-6820 TELEFAX (301) 296-6884

TOWSON, MARYLAND INDIA

County Board of Appeals 111 W. Chesapeake Avenue Towson, Maryland 21204

> RE: Case No.: @R89455 Engineers & Iron Workers, Petitioners

Dear Mr. Chairman:

I am in receipt of your notification to me concerning the above-captioned matter informing me that the hearing is set for October 11, 1989, at 10:00 a.m..

This is to advise you that I have prior commitments of court and would respectfully request a postponement of this matter. I would ask that this matter be set in immediately thereafter on a

I would ask your office to contact me so that a date may be set

that is not in conflict with all schedules.

cc: Mr. Jack Skipper Phyllis Cole F iedman, Esquire

DINENNA AND BRESCHI ATTC: NEYS AT LAW

GEORGE A. BRESCHI, P.A. FRANCIS X. BORGERDING, JR. 2 2 ALSO MEMBER OF DISTRICT OF

S. ERIC DINENNA. P.A.

**TOWSON, MARYLAND 21204** \_\_\_\_ (301) 296-6820 TELEFAX (301) 296-6884

SUITE 600

MERCANTILE-TOWSON BUILDING

409 WASHINGTON AVENUE

September 4, 1991

Mr. Jeffrey Long Office of Planning County Courts Building Towson, Maryland 21204

> RE: Property at Reisterstown Road and Owings Mills Blvd.

Dear Mr. Long:

This is to confirm our conversation last week where you indicated the above-captioned matter is presently before the County Board of Appeals pursuant to Case No. R-89-455 and will be made an issue in the upcoming Comprehensive Zoning Map procedure by the Office of Planning

You indicated to me that the matter was already made an issue.

On Tuesday, September 3, 1991, you phoned me indicating concerns as to the ownership of the property and that if the ownership of the property is changed since the filing of the Petition, a fee might have

This is to advise you that irrespective of the ownership of the property, the matter is still an issue as to land use and not necessarily as to ownership.

I am contacting my client relative to the actual ownership of the property and will advise you as soon as possible.

> Very truly yours, mu-S. ERIC DÍNÉNNA

cc: David Preller, Esquire

81 2Eb 11 bH S: 08 COUNTY EDARD OF APPEALS DINENNA AND BRESCHI

ATTORNEYS AT LAW

S. ERIC DINENNA, P.A. GEORGE A. BRESCI'I, P.A.

FRANCIS X. BORGERDING, JR. 1 \$ ALSO MEMBER OF DISTRICT OF COLUMBIA BAR

SUITE 600 MERCANTILE-TOWSON BUILDING **409 WASHINGTON AVENUE** TOWSON, MARYLAND 21204

\_\_\_\_ (301) 296-6820 TELEFAX (301) 296-6884

September 11, 1991

County Board of Appeals County Office Building 111 West Chesapeake Avenue Towson, Maryland 21204

RE: Case No.: R-89-455

Dear Mr. Chairman:

As you recall, the above-captioned matter was continued generally pending a request for a hearing to be filed by the property owner.

Please be advised that the present property owner is now the Eastern Land and Resource Corporation and that the owner wishes to have this matter now heard before the County Board of Appeals for purposes of submitting a documented site plan, therefore, amending the original Petition filed herein.

Some question has been raised as to the property owner and as this Board is well aware and the zoning regulations have to do with the use of the property and not the ownership of the property.

Accordingly, please set this matter in for a hearing for the purpose of submitting an amended site plan.

cc: Mr. Richard Woodfin Mr. David Fields

Wed 10/02 @ 930(?)

DINENNA AND BRESCHI

S. ERIC DINENNA, P.A. GEORGE A. BRESCHI, P.A.

FRANCIS X. BORGERDING, JR. 5

TALSO MEMBER OF DISTRICT OF COLUMBIA BAR

SUTTE 600 MERCANTILE TOWSON BUILDING **409 WASHINGTON AVENUE** TOWSON, MARYLAND 21204

(301) 296-6820

TELEFAX (301) 296-5884

September 24, 1991

Workers

County Board of Appeals of Baltimore County County Office Building, Room 315 111 W. Chesapeake Avenue Towson, Maryland 21204

> RE: Case No.: R-59-455 Petitioner: Engineers & Iron

Dear Mr. Chairman:

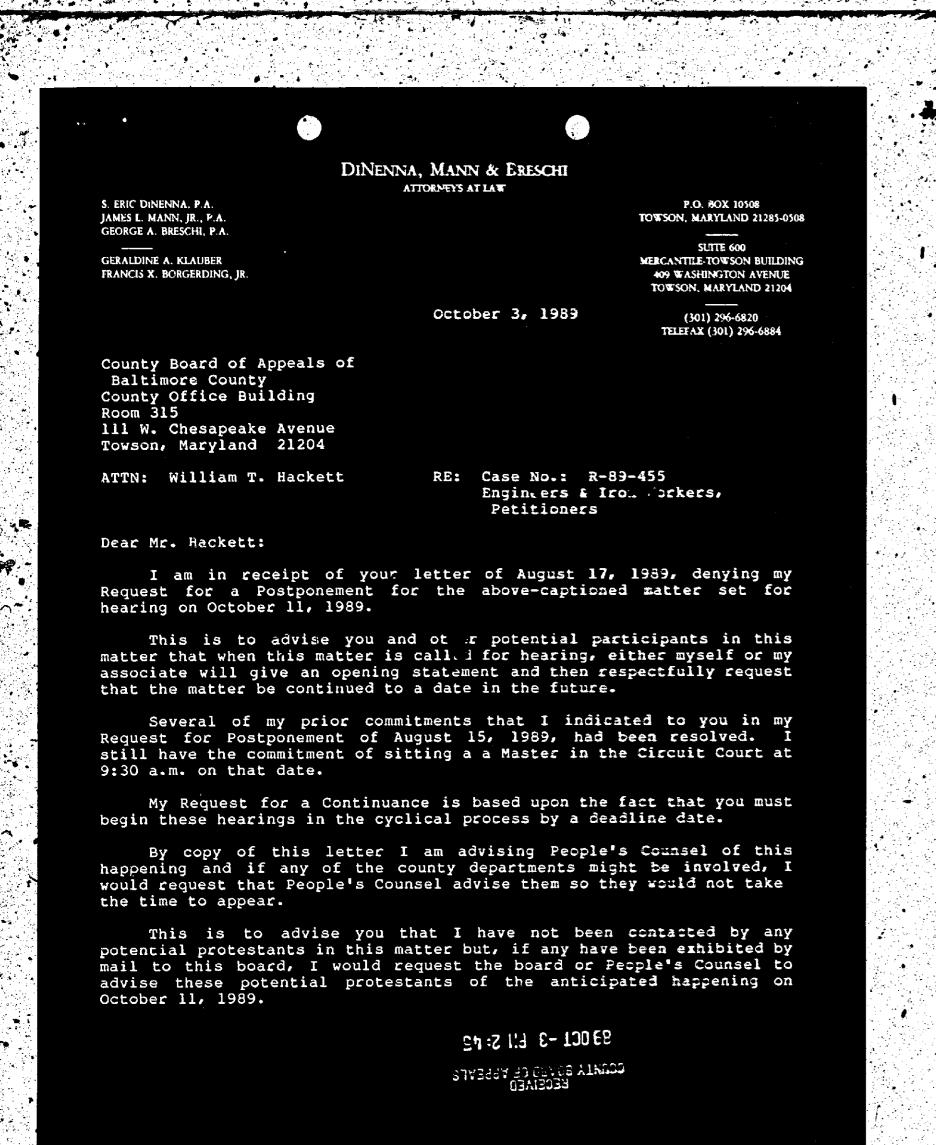
I am in receipt of your notification of a hearing date for the purpose of submitting an Amended Petition concerning the above-captioned matter and set for October 2, 1991 at 9:30 A.M.

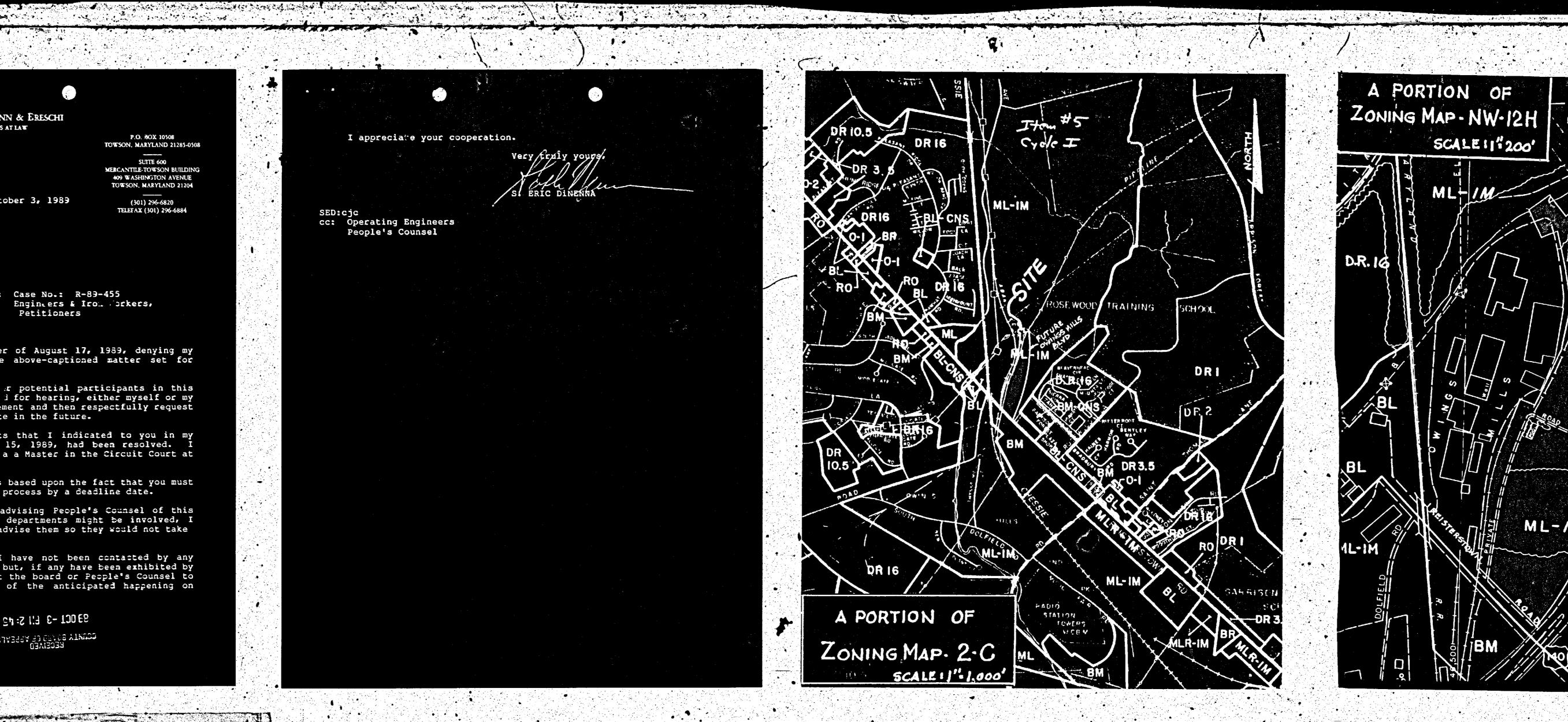
I must respectfully request a postponement of that date and time due to the fact that I am sitting as a Master in the Circuit Court for Baltimore County at that exact time and date.

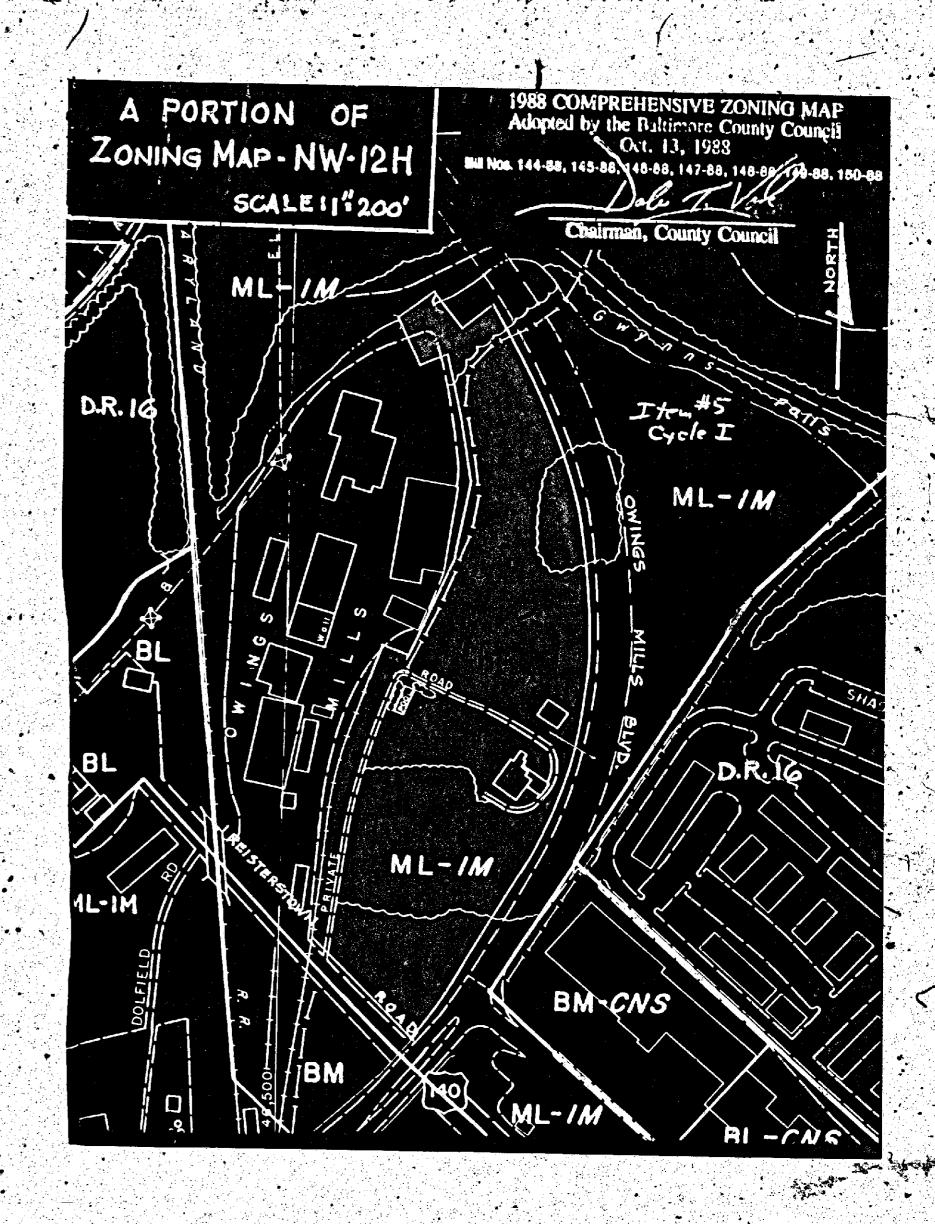
I would respectfully request that this matter not be set in until such time as requested by the Petitioner through this office. appreciate your cooperation.

cc: People's Counsel for Baltimore County Mr. Richard Woodfin

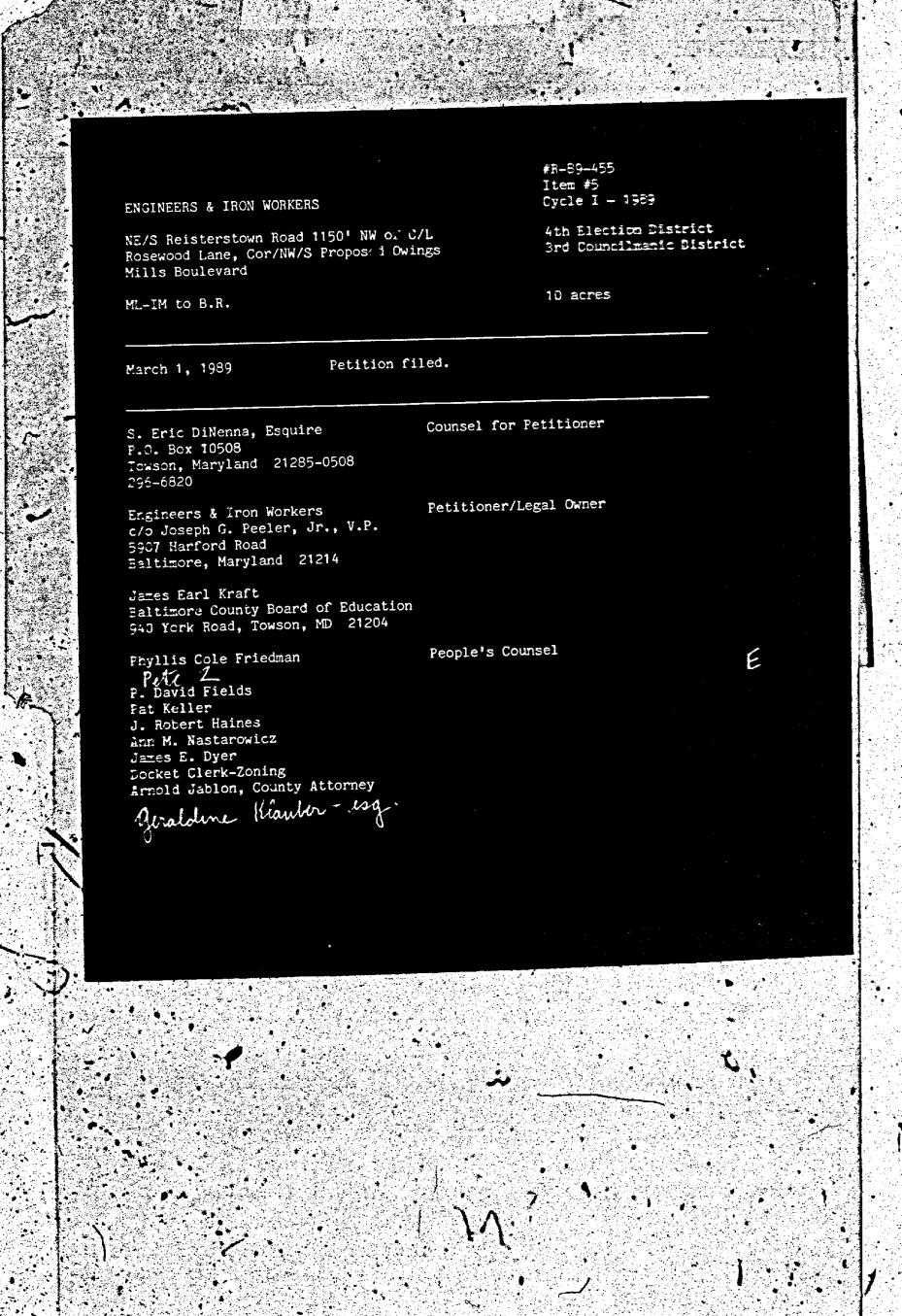
81 SEP 25 AM 11: 33

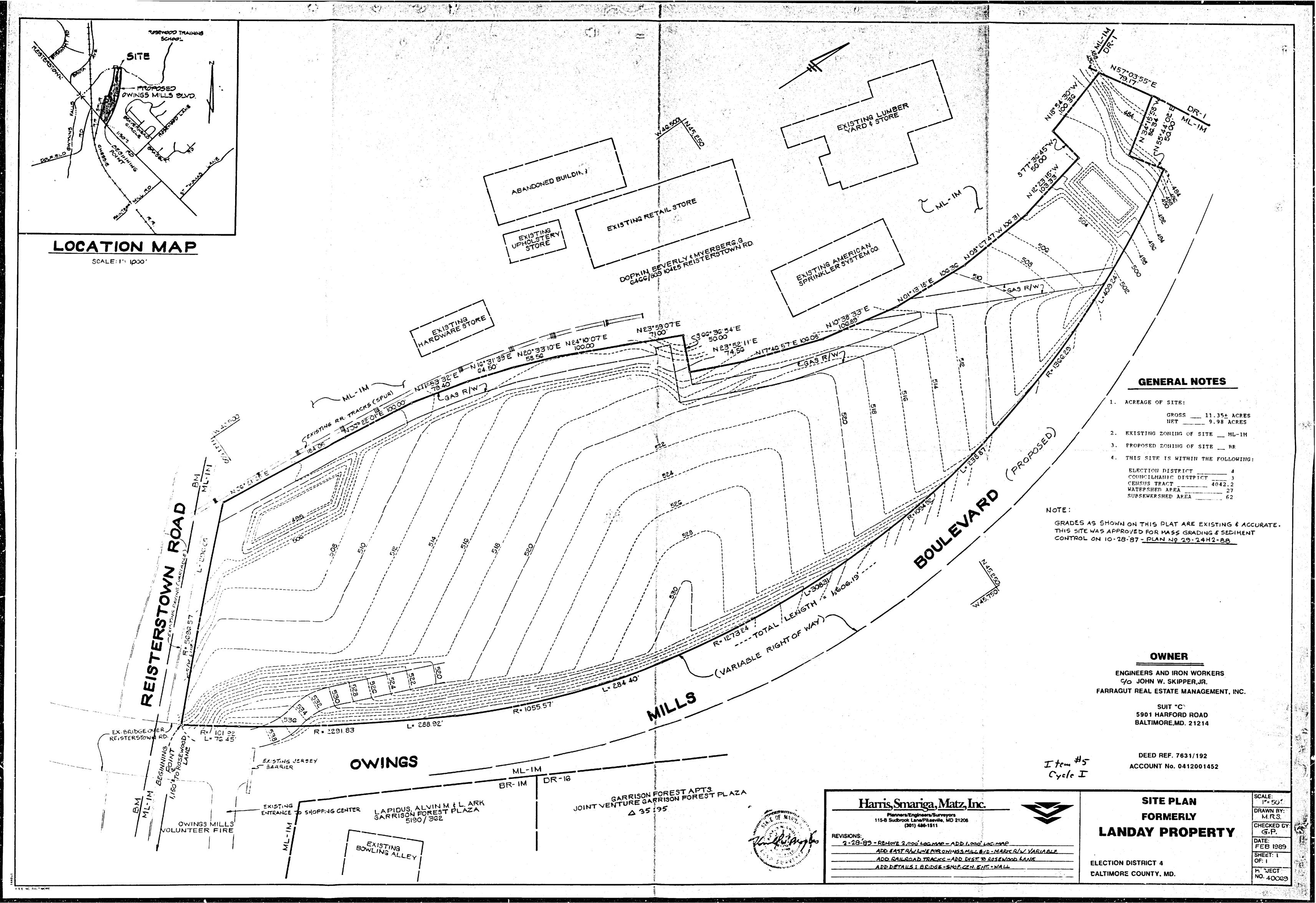






DRI





F & S Limited Partnership S/s W. Chesapeake Ave., 95' E of c/l Florida Ave. (307 W. Chesapeake Ave.)

D.R.5.5 to R.O.

#R-89-459, Item #9, Cycle I - 1989 9th Election District

4th Councilmanic District

March 1, 1989 Petition filed for reclassification of subject property from D.R. 5.5 to R.O. by Harry S. Shapiro, Esq. on behalf of Petitioner. Hearing before the Board (HEB).

Memorandum of Law submitted by John C. Murphy, Esquire on behalf December of Southland Hills Impr. Assoc., et al, Protestants.

Memorandum of Petitioner, F & S Ltd. Partnership submitted by December 5 Harry S. Shapiro, Esquire.

January 1, 1990 Planning Board Comments and attached source material received. Opinion and Order of the Board GRANTING the reclassification. / Order for Appeal and accompanying Petition filed in CCt, BCO by √ C John C. Murphy, Esquire on behalf of Protestants.

Certificate of Notice sent. Transcript of testimony filed; Fecord of Proceedings filed:

March 21, 1990 Forder for Appeal and Petition filed in CCt, BCo by People's Counsel. March 21, 1990 Certificate of Notice sent.

September 24  $\sqrt{E}$  Order of the CCt, BCo REVEF AG Board of Appeals (Murphy). October 15  $/\rho$  F & S Ltd. Part. Notice of Appeal to the Court of Special Appeals

Transcript of testimony filed; Fecord of Proceedings filed.

August 45, 1991 Court of Special Appeals Order issued AFFIRMING CCt, BCo which REVERSED C.B. of A.

September 3  $\ell$  Motion for Reconsideration filed in CCt, BCo by Harry S. Shapiro, LEsquire for F & S Ltd. Part.

September 12 7 Motion DENIED by Court of Special Appeals.



Court of Special Appeals Courts of Appeal Building Annapolis, Md. 21401-1699 (301) 974-3646

September 12, 1991

**WASHINGTON AREA (301) 261-2920** 

Harry S. Shapiro, Esquire

400 West Pennsylvania Avenue Towson, Maryland 21204

Re: F & S Limited Partnership vs. People's Counseb for Baltimore County et al. No. 1619, September Term, 1990

Dear Mr. Shapiro:

Be advised that by Order of this Court dated September 11, 1991, Appellant's Motion for Reconsideration of the Court's per curiam opinion filed on August 5, 1991 was denied. The mandate of the Court, which issued today, is enclosed.

LDG:1s

Enclosure

cc: Peter Max Zimmerman, Esquire Phyllis Cole Friedman, Esquire John C. Murphy, Esquire Arnold Jablon, Esquire

> BALTO ANNAPOLIS AREA (301) 974-3646 WASHINGTON AREA (301) 565-0450

person was aggrieved in accordance with the requirements of the statute and case law. The theory of Ginn v. Farley, 43 Md. App. 219, 403 A.2d 858, clearly established the burden upon the Appelles in this case. See also Southland Hills Improvement Association v. Raine, 220 Md. 213, 151 A.2d 734. In summary, on the issues relating to the Motion to Dismiss filed by the Appellant before the Circuit Court, we respectfully believe and aver that the Appellant here was entitled to the protection of the law not only before the Circuit Court but before this Honoraule Court in that the burden of proof should not have shifted to the Appellant to establish that the Appellee's were not appropriate parties. Additionally, there is an appropriate remedy that this Court could follow at this time in order to establish justice in this case which we will discuss at the conclusion herein after we discuss other issues raised in this Appeal and in this Motion.

4. The second issue which we would request that this Honorable Court reconsider is the issue relating to errors by the County Council in zoning issues relating to property directly across the street from the subject property (the Church property) and property directly adjacent to the subject property (Chesapeake Building). On page 10 of this Court's Opinion, the Court discussed the Circuit Court's views of the significance to the commercial parking lot on the Church property across the street from the subject property. In discussing this issue, this Honorable Court appeared to indicate that this was an old issue which was IN THE COURT OF SPECIAL APPEALS OF MARYLAND

PMZ:

SEP 1 1 1991 \*

F & S LIMITED PARTNERSHIP

Appellant

9.3-71

September Term, 1990

No. 1619

COUNTY, et al.

Appellee \* \* \* \* \* \* \* \* \* \* \* \* \*

PEOPLE'S COUNSEL FOR BALTIMORE \*

MOTION FOR RECONSIDERATION

The Motion for Reconsideration of the Appellant herein, F & S. Limited Partnership, by Harry S. Shapiro, its attorney, respectfully represents:

1. On August 5, 1991, this Honorable Court filed a Per Curiam Opinion in the above captioned proceeding.

2. Although the Appellant realizes that this Honorable Court read the briefs in this matter, and heard the oral argument, the Appellant sincerely believes that a reconsideration of the issues are in order in this case for the reasons that shall be set forth herein.

3. Question number 1, of the Appellant as set forth in its brief related to the question pertaining to whether or not there were any appropriate parties who had filed their appeal from the Board of Appeals for Baltimore County to the Circuit Court for Baltimore County. This issue is controlled by statute and case law which we believe to be completely controlling in this case. There appears to be no question

merely warmed over. On Page 11 of this Court's Opinion, this

Court stated that the County Council undertook its

comprehensive zoning in 1988 with the knowledge that there

was a special exception granted by the Board of Appeals for

the commercial parking lot at the Church property. However,

the issue of whether or not the Church had a legal commercial

parking lot under the special exception was clearly raised by

the Appellant before the Circuit Court and in the Appellant's

Brief before this Honorable Court. We clearly attempted to

point out that Baltimore County law does not allow a

commercial parking lot under a special exception

classification. Therefore, the County Council clearly was in

error in ignoring the illegal zoning at the Church parking

lot, or in failing to take it under proper consideration if

it knew that such illegal zoning was in fact present. On

page 5 of the Appellant's Brief, the Appellant clearly

pointed out that B-L Zoning is required under Section 230 of

the Zoning Regulations of Baltimore County before there could

have been a commercial parking lot at the Church property.

On page 21 of the Appellant's Brief, the Appellant referred

to the testimony of one of its experts, Mr. Bernard

Willemain, who testified that the Church was granted the

right to have a commercial parking lot without the B-L Zoning

which was necessary for a commercial parking lot. In other

words, the special exception granted to the Church was

illegal and constituted error on the part of the County

Council. This testimony was clearly before the Board of

that the burden is upon the Appellants from the Board of Appeals (Appellee's herein) to establish that they were proper parties before the Circuit Court. This burden of proof elementis not only prevalent at the Circuit Court level, but this burden of proof continues upon the Appellees to the Court of Special Appeals. However, we believe that this Honorable Court took the position that the burden was upon the Appellant here to establish that the Appellees were not appropriate parties. There is no law that we have been able to discover which calls for any shifting of the burden of proof from what prevails in the Circuit Court to what prevails at the Court of Special Appeals level after an appeal from the Circuit Court case. The Appellees never established any record to indicate that they were parties in the Board of Appeals except for the People's Counsel who was definitely a party. However, People's Counsel did not file any appeal to the Circuit Court for Baltimore County until after the 30 day period for Appeals as required by the Maryland Rules. Therefore, unless there were appropriate Appellants who had filed an appeal from the Board of Appeals to the Circuit Court within the 30 day period, then the Appeal of the People's Counsel was moot. We believe that the law applicable to the issues being explained herein are clearly established in the Appellant's Brief. In argument, this Court inquired as to whether or not there was any record (other than docket entries ) on the hearing on the Motion to Dismiss before the Circuit Court, but the elements in this case are quite clear that the Appellant had requested a

Appeals, was never discussed by Judge Murphy in the Circuit Court, and we believe was erroneously touched upon by this Honorable Court in its Opinion.

5. Another issue that was similar to the "illegal parking lot" was the issue discussed on page 22 of the Appellant's Brief in the testimony of another expert for the Appellant, namely Mr. Frederick P. Klaus, who also testified with reference to the lack of the B-L Zoning for the Church commercial parking lot, and he further confirmed that there was an error on the zoning line between the Chesapeake Building and the adjacent subject property which zoning line was in violation of the side yard restrictions of the zoning laws of Baltimore County. We respectfully allege that if the County Council knew that the aforesaid zoning line was in conflict with the zoning regulations of Baltimore County, or if the County Council failed to take same under consideration, then it was a clear error on the part of the County Council in either case. This issue was never discussed by the Circuit Court, and was not touched upon in this Honorable Court's Opinion.

6. The Appellant discussed at great length before the Circuit Court, and in its Brief before this Honorable Court, the issue relating to zoning by plebiscite which was clearly established by the evidence. Testimony before the Board of Appeals clearly established that the County Council person for the district in question established zoning for the subject property solely in accordance with the direct requests of some of such County Council person's

Extract presented to us. However, we believe that this Court was in error in assuming that the Appellant herein had the burden of proof to establish that the Appellees were not parties. We believe that this viewpoint is contrary to Maryland law which clearly established that the Appellees had the burden of establishing that they were proper parties for the appeal not only before the Circuit Court, but before this Honorable Court. Article 66B, Section 4.08 of the Annotated Code of Maryland (1988 Replacement Volume) clearly creates guidelines which places a burden of proof upon a person who feels aggrieved by a zoning decision to file an appeal to the

Transcript of the Record with reference to the issues under

the Motion to Dismiss as well as the issues under the

Decision on the Appeal generally. Only docket entries were

produced, and these docket entries were filed with this

Court. Additionally, the Appellees never produced any record

to establish that there was any evidence before the Circuit

Court to warrant the Appellees being considered as

appropriate parties before the Circuit Court, or before this

Honorable Court. On page 13 of the Opinion of this Court,

the Court stated that the Appellant had difficulties in that

no Transcript was made of the hearing before Judge Brennan,

and nothing with respect to that hearing is in the Record

Circuit Court for Baltimore County. This statute has been

construed by numerous cases which continue to establish that

the burden is upon the Appellant to the Circuit Court to

establish that such person was a taxpayer and that such

In our view, and in the view of the experts produced by the Petitioner, there is no property in Baltimore County that has been subjected to more erroneous zoning that the subject property. We respectfully submit that the strong evidence produced in this case, and the strong testimony through the experts of your Petitioner, clearly established errors in the adoption of the Land Use Map of 1988. These errors can be summarized (without any order of importance) as follows:

- 1. Improper consideration of B.L. Zoning Uses for commercial parking lot directly across from the subject property constituting an error in the consideration of the
- 2. Error in the Zoning Line between the subject property and 305 West Chesapeake Avenue (Chesapeake Building) creating commercial use by the Chesapeake Building on D.R. 5.5 property.
- 3. Councilmanic courtesy utilized by County Councilperson for district in question which constituted an illegal procedure creating an error in the Map.
- 4. Adoption of Southland Hills Line by the Southland Hills Association which was adopted by Baltimore County constituting zoning by plebiscite which has been determined by the Court of Appeals of Maryland as zoning error.
- 5. County admission that the 1988 Land Use Plan was supported by the 1979 Towson Plan (now obsolete by subsequent changes in the District in question) which was prior to the adoption of the R-O statute in Baltimore County. Additionally, the County admitted that it used a "Towson Plan"

which had not passed the procedures for adoption through the Planning Board of Baltimore County and through the County Council which action constituted erroneous procedures in the adoption of the Map.

- 6. County Council failed to consider, or refused to consider, the impact on the subject property which was described by Petitioner's experts as the only property of its kind with such a commercial impact and without any buffer.
- 7. County Council failed to consider trends of commercial impact in the first block from Bosley Avenue in an arbitrary and capricious fashion in order to satisfy a minority position in the community.
- 8. Councilperson from district by admissions, actions, and deeds has attempted to freeze the zoning uses on the subject property contrary to statutes, procedures, and Maryland case law.
- 9. In connection with the commercial parking lot at the church property, the D.R. Zones as set forth under Section 1801 of the Zoning Regulations of Baltimore County do not allow for a commercial parking lot. Although residential property may be utilized for parking with a special exception, said parking is limited to church use. In the case at bar, the evidence was clear that charges were made by the Church for parking use other than for church purposes. This requires a B.L. Zone as Section 230 of the Zoning Regulations for Baltimore County sets forth the use regulations in the Business Local Zone. If the County Council would have

properly considered the requirements at the area in question, they could have properly zoned the church property and properly zoned the subject property.

10. In connection with the error in the Zoning Line between the Chesapeake Building and the subject property, an appropriate consideration of the area by the County Council should have allowed for appropriate uses for both properties.

The witnesses for the Petitioner clearly indicated that councilmanic courtesy was practiced in connection with the Land Use Map of 1988. Although the Chairman of the Board of Appeals attempted to halt additional testimony relating to the issue, the Chairman recognized clearly in the record that Councilmanic courtesy is clearly practiced. This constitutes an erroneous delegation of the responsibility of the County Council to consider and to enact a comprehensive Land Use Map. The fact that the Council as a whole might have voted on issues in very District does not compensate, nor does it relieve, the Council's responsibility to exercise independent judgment. The procedure of rubber stamping the District person's Motions is erroneous under Maryland law. In the District in question, it is well recognized that Barbara Bachur determines the zoning for her district. In the review in the Towson Times of November 22, 1989 concerning the hearing in this case, Ms. Bachur was quoted as saying as follows:

"This case, Bachur said, was decided on community impact. 'Communities deserve every bit of protection they can get,' said Bachur."

She added that any future zoning change would have to come with community support. This statement merely confirmed the testimony of the witnesses in this case that zoning by plebiscite was practiced upon the subject property which procedure clearly constitutes error under Maryland law.

The report from the Planning Office sent to the Board of Appeals prior to the Hearing was improper under Section 2.58.1 of the Baltimore County Code before the representative for the Petitioner had an opportunity to review same and preempted the right to object in accordance with the said law. Finally, the said report was introduced over the objection of the Petitioner. Although the said exhibit attempted to take matters out of context from proceedings leading to the adoption of the Land Use Map of 1988 for the Fourth Councilmanic District, the said exhibit confirmed the adoption by Ms. Bachur of the alleged community's desires. This attempt to produce testimony out of context, and without any attempt to include testimony by anyone in favor of the R-O Zoning for the subject property, constituted a biased as well as an arbitrary and capricious attempt to take sides in the controversy rather than present unbiased facts that might be considered by the Board of Appeals. Notwithstanding this approach, the said so called "brief" of the County representative, Mrs. Itter, contained the following statement from someone representing the Southland Hills Improvement Association which was as follows:

"Mrs. Bachur has been very sensitive to our community's needs, and we look forward to her

continued sensitivity, and we look forward to the Board's support of the .... rather, the council's support of the Board's recommendation."

The exhibit further indicated how the councilmanic courtesy of the council is practiced, and indicates actions by Ms. Bachur in deciding on certain issues, including issue 4-001 involving the subject property, without any input from any other member from the County Council.

number 4-001 involving your Petitioner was determined for DR 5.5 Zoning based on a "Towson Plan" when Ms. Itter testified in the within case that the so called "Towson Plan" was not a valid document. The use of an invalid document to support what is supposed to be an objective Land Use determination constitutes error in this case.

We do not believe that anyone can quarrel with the testimony of the experts for your Petitioner when they stated that any Zoning other R-O Zoning for the subject property would be in error. The commercial impact on the subject property can not be debated. Section 203 of the Zoning Regulations of Baltimora County defines the R-O Zone as if it were written for the subject property as the Legislative Policy clearly indicates that the R-O Zoning was designed to accommodate houses impacted by commercial activity. To deny the heavy commercial impact on the subject property, and to deny the changes in trends in the Towson area in the immediate vacinity of the Court House, would be an arbitrary and capricious application of the appropriate R-O Zoning constituting error in the Land Use Map of 1988.

In the case of Mayor and Council of Rockville vs. Cotler 230 Md. 335, 187 A.2d 94, the Court of Appeals of Maryland, under Chief Judge Brune, stated the law of Maryland on the issue of whether or not a zoning decision may be based upon plebiscite of neighbors. The Court found that elements of the prior zoning decision was based upon a plebiscite of neighbors which the Court stated would not be permissable. The Court went on to further state that it was also not permissable to create a no man's land or buffer zone in property of the Appellees in said case for the benefit of others by preventing the Appellees from using their property for any of the purposes for which it is peculiarly suitable.

In the case of <u>Hedin vs. Board of County Commissioners</u>, 209 Md. 224, 120 A.2d 663, the Court of Appeals of Maryland made some classic statements which completely fit the case at bar when the Court stated as follows:

"We think that there was not sufficient evidence to warrant the conclusion of the Board in the instant case, and that the Board's action in basing its decision apparently almost entirely upon the personal opinion of one of its members, without support for that opinion in the evidence, amounted to arbitrary action on the part of the Board from which some form of relief may be had in equity hence, the decree of the Circuit Court will be reversed and the case remanded."

In this case the reference to the Board related to the County Commissioners of Prince George's County which had adopted the zoning in question in an arbitrary and capricious manner on one member's personal opinion without the support of evidence. This theory enunciated by the Court of Appeals is completely applicable in this case where Ms. Bachur through

the councilmanic courtesy delegated to her had arbitrarily adopted the zoning line requested by Southland Hills Improvement Association in this case. The testimony of the representatives from the Association as well as the County Representative, Diane Itter, is clearly analogous with the Hedin case.

In the case of <u>Benner vs. Tribbitt</u>, 190 Md. 5, 57 A.2d 346, the Court of Appeals of Maryland wrote a classic opinion concerning the exercise of police power as in the case of the granting of a permit, license or zoning. The Court stated as follows:

"On purely public or political questions regarding exercise of the police power, e.g., regulation or prohibition of liquor traffic or race-track betting or passage of general, traffic or zoning laws, legislators may follow the wishes of their constituents. Such action is not subject to judicial review. But in restraining individual rights by exercise of the police power neither a municipal corporation nor the state legislature itself can deprive an individual of property rights by plebiscite of neighbors or for their benefit. Such action is arbitrary and unlawful, i.e., contrary to Art. 23 of the Declaration of Rights and beyond the delegated power of the town of Denton to pass reasonable ordinances."

"There is no magic in the word 'zoning', but there is a wide difference between exercise of the police power in accordance with a comprehensive zoning plan, which imposes mutual restrictions and confers mutual benefits on property owners, and arbitrary permission to A and prohibition to B to use their own property, at the pleasure of neighbors or at the whim of legislative or administrative agencies."

Although Ms. Itter stated that the Southland Hills Association determines the zoning for its area, the testimony was doubtful that the community even was against the R-O

Zoning on the subject property at this time. A representative for the Association testified that out of the 210 residents polled concerning whether or not they were opposed to the R-O issue pertaing to this property, only 63 supported the opposition in this case. This represents a minority view even supporting the protestors in this case. It is also important to point out that the said witness testified that there are 309 families in Southland Hills and only 160 are members of the Association. When you compare the vote of 63 against the number of residents in the defined area, the support for the protesting position pales. It is also interesting to point out that some of the witnesses presented in protest were witnesses who resided in an area in West Towson were the R-O zone has extended to Highland Avenue which is much farther to the west of the subject property, and R-O conversions have proved to be good for the area.

Assuming arguendo that a majority of the people in the so-called Southland Hills boundary lines were against the R-O Zoning for the subject property, or the Southland Hills Association was able to dictate the zoning lines (which it did in this case), this would constitute zoning by plebiscite. The Court of Appeals of Maryland in the case of Mayor and Council of Rockville, Supra, clearly stated that a zoning decision may not be based upon plebiscite of neighbors of property which owners seek to rezone. This court stated clearly as follows:

"Here we think that the action of the City which purported to be and, we think, was rezoning